

ORIGINAL FILED

JAN 30 1985

WILLIAMS, CLE

CIVIL ACTION NO.

7 : 86 - 252-14

COMPLAINT

PRELIMINARY STATEMENT

10294739



costs incurred and to be incurred by the United States in response to the release or threatened release of hazardous substances from a facility located on County Road 72 (Burnt Gin Road) near Gaffney, Cherokee County, South Carolina (hereinafter "Medley Farm Site" or the "Site"). The action is also brought pursuant to 28 U.S.C. § 2201 for declaratory relief entitling the United States to recover all future response costs incurred in connection with the Medley Farm Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1345, 2201 and 42 U.S.C. §§ 9607(a) and 9613(b).

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b), 2201, as the release or threatened release of hazardous substances that gave rise to this claim occurred in this district and the Medley Farm Site is located in this district.

DEFENDANTS

4. Defendant Ralph Medley is and was at all times relevant hereto the owner of the Medley Farm Site and was, at the time of disposal of hazardous substances at the Site, the owner and/or operator of that facility.

5. Defendants Clyde Medley, Grace Medley and Barry Medley individually and d/b/a Medley's Concrete Works each actively participated in, managed, supervised, or were otherwise involved in the operations at the Medley Farm Site, and, at the

time of disposal of hazardous substances at the Site, were operators of the Medley Farm Site. On information and belief, Medley's Concrete Works is and was at all times relevant hereto an unincorporated sole proprietorship or partnership which conducts business in this judicial district.

6. Defendant Milliken Chemical Company (formerly Sylvan Chemical Corporation and hereafter "Milliken") is a division of Milliken and Company, a Delaware corporation, qualified to do business in the State of South Carolina as a foreign corporation.

7. Defendant Unisphere Chemical Corporation (hereafter "Unisphere") is a wholly owned subsidiary of ORO Enterprises, Inc. Unisphere is incorporated in the State of South Carolina.

8. Defendant National Starch and Chemical Corporation (formerly Charles S. Tanner Company and hereafter "National Starch") is a Delaware corporation which is qualified to do business in the State of South Carolina as a foreign corporation. National Starch is a wholly owned subsidiary of Unilever United States, Inc.

9. Defendants Milliken, Unisphere and National Starch, are and were at all times relevant hereto generators of hazardous substances. Each by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances

owned or possessed by such person or corporate defendants, at the Medley Farm Site a facility owned or operated by parties other than these corporate defendants, from which there was a release or threatened release of hazardous substances which caused the incurrence of response costs.

10. Each defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(a).

GENERAL ALLEGATIONS

11. The Medley Farm Site (also known as the Burnt Gin Site) is and was at all times relevant hereto a hazardous waste disposal facility. The site contained a drum disposal area and six small lagoons.

12. From the mid 1960's until approximately 1977, defendant Ralph Medley owned and defendants Ralph Medley, Clyde Medley, Grace Medley and Barry Medley, individually and d/b/a Medley's Concrete Works, operated a waste disposal facility on the Medley Farm Site. As a result of those operations, unknown quantities of liquid waste and more than 5300 fifty-five (55) gallon drums and fifteen (15) gallon containers of waste, all or most of which came from defendants National Starch, Milliken, and Unisphere, were disposed of at the site. The drums and unknown quantities of liquid waste disposed of in the lagoons on-site contained chemical materials, including substances considered

hazardous under CERCLA. The operators of the site rolled the drums out of trucks without a ramp, causing many drums to rupture. As a result of the drum disposal and the disposal of liquid waste in lagoons on-site, the site's surface became contaminated with hazardous substances, and those substances leached down through the site's surface to contaminate the groundwater.

Sampling and analysis of the surface water, site soil, well water from neighboring wells, and groundwater revealed the presence of various toxic organic compounds or hazardous substances including, but not limited to, benzene, methylene chloride, vinyl chloride, tetrachlorethylene, phenol, toluene, trichlorethylene, -1, 2-dichloroethane and polychlorinated biphenyls (PCBs). Each of the above named substances is a hazardous substance pursuant to and as defined by Section § 101(14) of CERCLA.

The Medley Farm Site is situated in a residential and agricultural area in near proximity to both residential wells and Jones Creek.

13. In May and June of 1983, investigations by the EPA and the South Carolina Department of Health and Environmental Control ("SCDHEC") documented the presence of significant levels of hazardous substances at the site.

14. In response to the release or threatened release of hazardous substances into the environment at the site, on June 20, 1983, EPA, through its contractors, initiated response measures at the site to reduce or eliminate the hazards presented thereby. A substantial quantity of contaminated soil and solid

waste (2132 cubic yards) was excavated and disposed of and approximately 24,000 gallons of liquid waste were removed and shipped to an approved hazardous waste facility. Cleanup of the site was completed on July 21, 1983.

15. Expenditures or costs incurred to date in this removal action by the United States are in excess of \$570,000. These expenditures include the cost of response, cleanup, removal and disposal of the materials and hazardous substances at the Medley Farm Site. The United States may incur additional response costs in the future.

16. Defendants are jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for this amount as well as all other administrative, investigative, and legal expenses incurred or to be incurred by the federal government relative to the Medley Farm Site. The United States is continuing to incur further costs, including enforcement expenditures, to recover amounts of money it has expended at the site.

CLAIM FOR RELIEF

17. The allegations of Paragraphs 1 through 16 above are incorporated by reference as if fully alleged below.

18. Section 104(a) and (b) of CERCLA, 42 U.S.C. § 9604(a) and (b), in pertinent part provides:

(a)(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment the President is authorized to act, consistent with the national contingency plan, to remove

or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment, unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat or release emanates, or by any other responsible party.

* * *

(b) Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substance, pollutants or contaminants involved, and the extent of danger to the public health or welfare or the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

18. Authority under Section 104 has been delegated to EPA pursuant to Exec. Order No. 12316, 46 Fed. Reg. 42237 (August 14, 1981) and Exec. Order No. 12286, 46 Fed. Reg. 9901 (January 19, 1981).

20. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),
in pertinent part provides:

(a) Notwithstanding any other provision or
rule of law, and subject only to the defenses
set forth in subsection (b) of this section --

(1) the owner and operator of . . . a
facility, (2) any person who at the time
of disposal of any hazardous substance
owned or operated any facility at which
such hazardous substances were disposed
of, (3) any person who by contact, agree-
ment or otherwise arranged for disposal
or treatment, or arranged with a transporter
for transport for disposal or treatment
of hazardous substances owned or possessed
by such person by any other party or
entity, at any facility owned or operated
by another party or entity and containing
such hazardous substances . . . from which
there is a release, or a threatened release
which causes the incurrence of response
costs, of a hazardous substance, shall be
liable for --

(A) all costs of removal or remedial
action incurred by the United States
Government or a state not inconsistent
with the national contingency plan; . . .

21. The term "hazardous substance" is defined in
Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), in pertinent
part as:

(A) any substance designated pursuant to Section
311(b)(2)(A) of the Federal Water Pollution Control
Act, . . . (B) any element, compound mixture,
solution or substance designated pursuant to
Section 9602 of this title, (C) any hazardous waste
having the characteristics identified under or
listed pursuant to Section 3001 of the Solid Waste
Disposal Act (but not including any waste the
regulation of which under the Solid Waste Disposal
Act has been suspended by Act of Congress),

(D) any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under Section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance of mixture with respect to which the Administrator has taken action pursuant to Section 7 of the Toxic Substances Control Act.

22. The term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), in pertinent part as:

any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. . . .

23. The term "facility" is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), as:

(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

24. The term "disposal", as defined in Section 101(29) of CERCLA, 42 U.S.C. § 9601(29), has the same meaning as provided in Section 1004 of the Solid Waste Disposal Act, 42 U.S.C. § 6903, which states:

(3) The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

25. The Medley Farm Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

26. Hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were, at all times relevant hereto, delivered to and stored, treated or disposed of at the Medley Farm Site.

27. At all times relevant hereto, there were releases or threatened releases of hazardous substances into the environment at the Medley Farm Site within the meaning of Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).

28. The United States has incurred costs for actions taken in response to the release or threat of release of hazardous substances from the Medley Farm Site.

29. The United States' response actions taken at the Medley Farm Site and the costs incurred incident thereto were not inconsistent with the National Contingency Plan.

30. The United States has satisfied any condition precedent to the undertaking of response actions, the incurrence of response costs, and to the recovery of those costs under Section 107 of CERCLA, 42 U.S.C. § 9607.

31. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), each of the defendants is jointly and severally liable to the United States for all costs of response actions incurred and to be incurred by the United States as a result of releases or threatened releases of hazardous substances from the Medley Farm Site.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that this Court:

1. Enter judgment against the defendants, jointly and severally, in favor of the United States for all costs incurred and to be incurred by the United States in response to the release or threatened release of hazardous substances at the Medley Farm Site, plus interest, which costs are now in excess of \$570,000.00;
2. Enter declaratory judgment, pursuant to 28 U.S.C. § 2201, that the defendants are jointly and severally liable for such additional response costs, plus interest, as may be incurred in the future by the United States pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. § 9604 and 9607, in connection with the Medley Farm Site;
3. Award the United States costs, including the costs of bringing this enforcement action, attorneys' fees and expenses; and
4. Grant such other and further relief as it deems appropriate.

Respectfully submitted,




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Washington, D.C. 20530

VINTON DEVANE LIDE
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By: 

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PAMELA S. SBAR
Office of Enforcement and Compliance
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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

ORIGINAL FILED

JAN 30 1986

WILLIAMS, CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH C. MEDLEY, et al.,

Defendants.

CIVIL ACTION NO.

7 : 86 - 252 - 143

ANSWER OF PLAINTIFF TO STANDARD
INTERROGATORIES ADOPTED BY THE COURT

The Plaintiff, United States of America, pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Amended Order M-85-3 of this Court, responds to the standard interrogatories adopted by the Court as follows:

1. State with particularity what you contend the defendant did or failed to do, which entitles you to obtain the relief you seek in this action.

ANSWER

Plaintiff states and alleges the following upon information and belief:

Defendant, Ralph C. Medley, is the current owner of the Medley Farm Site and was the owner and/or operator of the Medley Farm Site at the time hazardous substances were disposed of there. A release or threatened release of hazardous

substances occurred at the Medley Farm Site which caused the incurrence of response costs in 1983 by the United States, pursuant to Sections 104 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, ("CERCLA") 42 U.S.C. §§ 9604 and 9607. The Medley Farm Site is a facility where hazardous substances, as defined under CERCLA, have been deposited, stored, disposed of, placed or otherwise came to be located. Ralph C. Medley and the other named defendants are strictly, jointly and severally liable to the United States, under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs incurred and to be incurred by the United States as a result of releases or threatened releases of hazardous substances from the Medley Farm Site. Ralph C. Medley was given notification by the U.S. Environmental Protection Agency ("EPA") of his potential liability for cleaning up the site on or about June 15, 1983, and EPA determined from Mr. Medleys response that he did not intend to implement recommended corrective measures or cleanup the site.

Defendant Clyde Medley, Grace Medley and Barry Medley, individually and d/b/a Medley's Concrete Works, were operators of the Medley Farm Site or persons who at the time of disposal of hazardous substances operated the facility, known as the Medley Farm Site, at which hazardous substances were disposed of. A release or threatened release of hazardous substances occurred at the Medley Farm Site which caused the incurrence of response costs in 1983 by the United States, pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and 9607.

The above named defendants actively participated in, managed, supervised or were otherwise involved in operations at the Medley Farm Site and arranged for disposal of hazardous substances at the facility.

Clyde Medley, Grace Medley and Barry Medley, individually and d/b/a Medley's Concrete Works, and the other defendants named in the complaint are of strictly, jointly and severally liable, under CERCLA Section 107(a), for all costs incurred and to be incurred by the United States as a result of the release or threatened release of hazardous substances from the Medley Farm Site.

Milliken Chemical Company, formerly Sylvan Chemical Corporation and a division of defendant Milliken and Company ("Milliken"), is a person who by contract, agreement, or otherwise arranged for disposal, or arranged with a transporter for transport for disposal, of hazardous substances owned by defendant Milliken, at the Medley Farm Site, a facility owned or operated by another party and containing hazardous substances. Milliken transacted business with the owners and/or operators of the Medley Farm Site during the years of 1966 to 1976 and arranged for the transportation and disposal of various non-hazardous and hazardous textile organic chemicals in 55-gallon drums as well as nonhazardous solid waste at the Medley Farm Site or facility. Milliken and the other defendants are strictly,

jointly and severally liable to the United States, under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs incurred and to be incurred by the United States as a result of releases or threatened releases of hazardous substances from the Medley Farm Site. Milliken is a generator of hazardous substances.

Defendant, Unisphere Chemical Corporation ("Unisphere"), is a person, as defined under CERCLA, who by contract, agreement, or otherwise arranged for disposal, or arranged with a transporter for transport for disposal, of hazardous substances owned by Unisphere, at the Medley Farm Site, a facility owned or operated by another party and containing hazardous substances. Unisphere transacted business with the owner and/or operators of the Medley Farm Site, during the period of its operation as a unpermitted hazardous waste disposal facility, and arranged for the transportation and disposal of hazardous substances, including acetone and dibutyl maleate, in 55-gallon drums at the Medley Farm Site or facility.

Unisphere and the other defendants named in the complaint are strictly, jointly and severally liable to the United States, under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs incurred or to be incurred by the United States as a result of releases or threatened releases of hazardous substances from the Medley Farm Site. Unisphere is a generator of hazardous substances.

Defendant, National Starch and Chemical Corporation ("National Starch") formerly Charles S. Tanner Company, is a person, as defined under CERCLA, who by contract, agreement, or otherwise arranged for disposal, or arranged with a transporter for transport for disposal, of hazardous substances owned by defendant, at the Medley Farm Site, a facility owned or operated by another party and containing hazardous substances. National Starch arranged for the transport and disposal of hazardous substances at the Medley Farm Site or facility.

National Starch transacted business with the owners and/or operators of the Medley Farm Site during the period of its operation as an unpermitted hazardous waste disposal facility and arranged for the transport and disposal of nonhazardous and hazardous substances in both 55-gallon drums and tank loads of emulsion wastes which may have been contaminated with various hazardous constituents such as toluene and vinyl chloride. Drums exhibiting National Starch or Charles S. Tanner Company labels were found at the site during EPA's response action. According to the operators of the Medley Farm Site, Charles S. Tanner Company, which National Starch acquired from CIBA-GEIGY Corp., may have accounted for 85% of the waste material disposed of at the site.

2. Describe in detail all laws, acts having the force and effect of law, codes, regulations and legal principles, standards and customs or usages, which you contend are applicable to this action.

ANSWER

Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, ("CERCLA") 42 U.S.C. § 9604, which authorizes the President to act in response to a release or substantial threat of release of hazardous substances into the environment, establishes procedures for government response actions, limits expenditures from the Hazardous Substance Response Fund Created by CERCLA to finance governmental cleanups, and provides for cooperation in the federal-state relationship.

Section 101 of CERCLA, 42 U.S.C. § 9601, which defines terms used under the law.

Section 107 of CERCLA, 42 U.S.C. § 107, which establishes and assigns liability for responsible parties, i.e., owners, operators, generators and transporters, for the release or threatened release of hazardous substances from a facility which has caused the incurrence of response costs by the government, and provides statutory defenses to liability. A responsible party is liable for all costs of removal and remedial actions taken by the United States or a state not inconsistent with the National Contingency Plan.

Section 105 of CERCLA, 42 U.S.C. § 9605, which requires the President to prepare a National Contingency Plan ("NCP") for removal of hazardous substances, requires the U.S. Environmental Protection Agency ("EPA") to devise a comprehensive plan for cleaning up hazardous waste sites, and directs EPA to establish priorities among hazardous waste sites, reflected in a National Priority List of hazardous waste sites.

40 C.F.R. Part 300, the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), adopted pursuant to Section 105 of CERCLA to effectuate the response powers and responsibilities created by the Comprehensive Environmental Response, Compensation and Liability Act of 1980. The NCP is applicable to response actions taken pursuant to CERCLA and Section 311 of the Clean Water Act. The NCP details methods for discovering and investigating sites where hazardous substances have been identified, methods for remedying releases of hazardous substances, and criteria for determining the appropriate extent of response actions.

28 U.S.C. § 2201 which authorizes a federal court, upon filing of an appropriate pleading, in a case of actual controversy within its jurisdiction, to declare the rights and other legal relations of any interested party seeking such declaration. The declaratory judgment remedy is an all-purpose remedy designed to permit an adjudication whenever the court has jurisdiction, there is an actual case or controversy and an adjudication would serve a useful purpose.

The United States in this action asks the court to enter a declaratory judgment that defendants are jointly, severally and strictly liable for response costs to be incurred in the future by the United States in connection with the Medley Farm Site. EPA contends that some hazardous substances are still present in the soil at the Medley Farm Site and may have leached through the soil and pose a threat of contamination of groundwater. Further response action may be necessary due to groundwater contamination and migration of contaminants, via the groundwater, from the site.

28 U.S.C. § 1345 which provides that district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States.

42 U.S.C. § 9613(b) which provides that the United States District Courts shall have exclusive original jurisdiction over all controversies under CERCLA, without regard to the citizenship of the parties or the amount in controversy and venue in actions under CERCLA shall lie in any district in which the release of hazardous substances occurred or in which the defendant resides, may be found, or has his principal office.

Section 311 of the Clean Water Act which provides the standard of strict liability in all actions brought under CERCLA.

RECOVERY OF COSTS

Plaintiff contends, pursuant to Section 107 of CERCLA, that it is entitled to recover from the defendants named in the complaint all of its response costs or costs of the removal action incurred by the United States including the costs of investigations, monitoring, and testing to identify the nature and extent of the release or threatened release of hazardous substances at the Medley Farm Site, the costs of bringing this enforcement action, litigation costs, attorneys fees, prejudgment interest, and any other necessary costs of response incurred by any person not inconsistent with the National Contingency Plan.

STRICT LIABILITY

CERCLA Section 101(32), 42 U.S.C. § 9601(32), provides that the standard of liability under CERCLA is the same as the standard of liability under Section 311 of the Clean Water Act, 33 U.S.C. § 1321. Liability under Section 311 is strict. The standard of liability adopted in Section 101(32) applies equally to Sections 104 and 107 of CERCLA.

JOINT AND SEVERAL LIABILITY

Each of the defendants named in the complaint is jointly and severally liable to the United States for all costs of response actions incurred and to be incurred by the United States as a result of releases or threatened releases of hazardous substances from the Medley Farm Site. Liability

under CERCLA is joint and several where the harm is indivisible. In this case the substances disposed of at the Medley Farm Site facility, by these defendants, were commingled and many of the drums found on site had ruptured making it impossible to determine each defendant's relative contribution or to segregate waste streams. The release or threatened release of hazardous substances from the Medley Farm Site cannot be divided or apportioned among the defendants due to commingling of wastes, ruptured or leaking drums and chemical reactions. The responsible parties named as defendants in the complaint acted in concert to produce an indivisible harm at the Medley Farm Site.

JURY TRIAL

Cost recovery actions under Section 107 of CERCLA, 42 U.S.C. § 9607, seek the equitable remedy of restitution for which there is no right to trial by jury under the Seventh Amendment to the United States Constitution. 28 U.S.C. § 2201, the Declaratory Judgment Act, creates no right to a jury-trial when the United States seeks a declaration of rights and liabilities under CERCLA.

3. State the full names, addresses, and telephone numbers of all lay witnesses whose testimony you may use at the trial of this case and describe the issues to which that testimony will relate.

ANSWER

A. Jack Stonebraker
U.S. Environmental Protection Agency
Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

Mr. Stonebraker was EPA's On-Scene-Coordinator during its response action at the Medley Farm Site. He is expected to testify as to the release or threatened release of hazardous substances and about the cleanup efforts at the site. In addition Mr. Stonebraker is expected to testify about sampling activities and consistency of response or removal costs with the National Contingency Plan.

B. James Ullery
South Carolina Department of Health and
Environmental Control
2600 Bull Street
Columbia, South Carolina 29201
Tel: (803) 758-5681

Mr. Ullery was South Carolina's On-Scene Coordinator during EPA's response actions at the Medley Farm Site. Mr. Ullery is expected to testify as to the release or threatened release of hazardous substances and about the cleanup efforts at the site.

C. William McBride
U.S. Environmental Protection Agency
Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

Mr. McBride is expected to testify about administrative, legal and personnel costs incurred by Region IV as a result of the response or removal action, investigation and enforcement actions.

Mr. McBride may be offered as a cost documentation witness.

D. O.H. Materials Company
P.O. Box 551
Findlay, Ohio 45840
Tel: 1/800-537-9540

It is anticipated that personnel from O.H. Materials Company, contractor for the cleanup of the Medley Farm Site, will testify at trial as to the cleanup and sampling work done on site. The identity of personnel to be offered as witnesses at trial are presently unknown. Plaintiff will seasonably supplement this response and provide defendants with the identity of these potential witnesses when the information becomes available.

E. Janet Farella
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
Tel: (202) 382-2016

Ms. Farella is expect to be a cost documentation or cost summary witness for costs incurred by EPA in response to release or threatened release of hazardous substances from the Medley Farm Site.

Plaintiff reserves the right, pursuant to the Federal Rules of Civil Procedure, to seasonably supplement its response to this interrogatory and identify additional lay witnesses that it may use at trial within ten (10) days after receipt of that information.

4. Identify by full name, address, and telephone number each person whom you expect to call as an expert witness at the trial of this case, and, as to each expert so identified, state the subject matter on which he is expected to testify, the substance of the facts and opinions to which he is expected to testify, and a summary of the grounds for each opinion.

ANSWER

The United States is unable to identify, at this time, the persons that it may call as expert witnesses at the trial of this case. Plaintiff reserves the right, pursuant to the Federal Rules of Civil Procedure and Amended Order M-85-3, to seasonably supplement its response to this interrogatory and identify expert witnesses that it may use at trial, within ten (10) days after receipt of that information.

5. If you contend that you have been injured or damaged, describe said injuries in detail and list the elements of damages for which you contend you are entitled to recover and the measure by which you contend the same should be computed.

ANSWER

The United States does not contend that it has been injured or damaged but states that this is an action brought by the United States pursuant to Section 107(a), 42 U.S.C. § 9607(a), for reimbursement of removal, remedial or response costs incurred at the Medley Farm hazardous waste site near Gaffney, South

Carolina. Cost is used to refer to all costs of removal, response or remedial action incurred by the United States in connection with the release or threatened release of hazardous substances from the Medley Farm Site. Expenditures or costs incurred to date in this removal or response action are in excess of \$570,000.00. The expenditures include the costs of response, cleanup, removal and disposal of the materials and hazardous substances at the Medley Farm Site. The United States is continuing to incur further or additional costs, including enforcement expenditures, to recover amounts of money it has expended at the site.

6. State the name, address and telephone number of all persons or legal entities who have a subrogation interest in the cause of action set forth in your complaint and state the basis and extent of said interest.

ANSWER

None

7. Outline in detail the discovery you anticipate you will pursue in this case and state the time you estimate it will take you to complete each item of same, along with an explanation of how you compute said times.

ANSWER

The United States anticipates that it will serve interrogatories and requests for admissions, subject to limitations of discovery adopted by this court, on each defendant within 45 days after service of the summons and

complaint upon each defendant. Pursuant to Rule 33 of the Federal Rules of Civil Procedure each defendant must serve a copy of its answers, and objections if any, within 30 days after the service of the interrogatories.

The United States anticipates that it will serve requests for production of documents upon each defendant at the same time as service of the interrogatories and requests for admission.

The United States also anticipates taking the depositions of the individual Medley defendants, alleged in the complaint to be owners and/or operators of the Medley Farm Site, within 180 days after the filing of the complaint. Depositions will also be taken, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, of the corporate defendants, alleged to be generators of hazardous waste transported to and disposed at the Medley Farm Site, within 180 days after the filing of the Complaint.

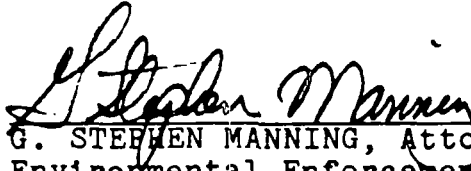
Additional depositions may be noticed, after responses are received from the interrogatories and, requests for admission and requests for production of documents, of current or former employees of the defendants with knowledge concerning the transportation and disposal of hazardous substances at the Medley Farm Site. All of Plaintiff's discovery should be completed within 180 days after the filing of the complaint.

8. Do you wish for this case to be tried jury or
nonjury?

ANSWER

Nonjury.

Respectfully Submitted,

A handwritten signature in cursive script, reading "G. Stephen Manning", is written over a horizontal line.

G. STEPHEN MANNING, Attorney
Environmental Enforcement Section
Land and Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 633-5409

VERIFICATION

James H. Sargent, pursuant to 28 U.S.C. § 1746, states that he is Regional Counsel for the U.S. Environmental Protection Agency, Region IV, Atlanta, Georgia; that he has read the foregoing answers or responses and that he is familiar with all the facts and circumstances stated therein; that the same are true of his own knowledge except as to those matters and things stated and alleged upon information and belief, and as to those matters he believes it to be true.

I, James H. Sargent, verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 27th day of January 1986.



JAMES H. SARGENT
Regional Counsel

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

ORIGINAL FILED

FEB 26 1988

JOHN W. WILLIAMS, CLERK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
RALPH C. MEDLEY; CLYDE MEDLEY,)
GRACE MEDLEY AND BARRY MEDLEY,)
INDIVIDUALLY AND d/b/a)
MEDLEY'S CONCRETE WORKS;)
MILLIKEN AND COMPANY;)
UNISPHERE CHEMICAL CORPORATION;)
NATIONAL STARCH AND CHEMICAL)
CORPORATION,)
)
Defendants.)

CIVIL ACTION NO.

7-86-252-3

ANSWER

The Defendants, Ralph C. Medley, Clyde Medley, Grace Medley and Barry Medley, individually and d/b/a Medley's Concrete Works, by way of Answer and Cross-Claim to the Complaint of the Plaintiff respectfully allege:

1. That as to Paragraph 1, the Defendants admit that the action is brought pursuant to the statutes cited but deny that the "Medley Farm Site" has or threatens to release hazardous substances into the environment and further allege that the quantity of hazardous waste, if any, found at the Site was minuscule and posed no threat to life, health or environment and the action taken and the action contemplated by Plaintiff are totally unjustified and improper.

2. That as to Paragraphs 2 and 3, the Defendants admit that jurisdiction and venue are proper but deny that there has been any release or threatened release of hazardous substances from the Site that give rise to this claim.

3. That as to Paragraph 4, the Defendants admit that Ralph Medley owns the real estate upon which the Site is located but denies that any significant hazardous substances were placed on the Site and denies that he was an operator of a facility.

4. That as to Paragraph 5, the Defendants admit that Clyde Medley is the sole proprietor of Medley's Concrete Works but deny that Grace Medley and Barry Medley had any proprietary interest in the company and were only parttime employees. The Defendants deny that they were operators of a Site for the disposal of hazardous substances.

5. The Defendants admit the allegations contained in Paragraphs 6, 7, 8 and 10.

6. That as to Paragraph 9, Ralph Medley and Clyde Medley admit that by agreement they allowed the Defendants Milliken and Company, Unisphere Chemical Corporation and National Starch and Chemical Corporation, along with others, to place non-hazardous substances and barrels on the land of Ralph Medley. That if any hazardous substances were placed on the Site, which the Defendants specifically deny, it was done without the knowledge and/or consent of any of the Medley Defendants. The Defendants

further deny that there was a release of hazardous substances sufficient to cause the incurrence of the response costs or to cause any danger to the environment.

7. That as to Paragraph 11, the Defendants specifically deny that the Site was a hazardous waste disposal facility and allege that it was improperly so classified by Plaintiff for unknown reasons.

8. As to Paragraph 12, the Defendants allege that only Ralph Medley and Clyde Medley had any part in the agreements with the companies. That Ralph Medley and Clyde Medley agreed with the companies to provide a storage facility for non-hazardous waste. That all of the substances were delivered to the Site in drums or containers. That the Defendants never agreed to allow or had any knowledge of any hazardous waste being placed on the Site. The companies either hauled or arranged for the hauling of the containers which, when delivered, were suppose to be stacked on the ground by them. That in addition to, Milliken and Company, Unisphere Chemical Corporation and National Starch and Chemical Corporation, substances were placed on the Site by Aabco Chemicals, Roebuck, S. C., Polymer Industries, Greenville, S. C. and Ethox Chemicals, Greenville, S. C. The Defendants deny that any significant contamination of the ground, ground water or environment occurred or will in the future occur at the Site and that the acts of the Plaintiff were totally

unjustified.

That with regard to the sampling done by Plaintiff, the Defendants allege that if any hazardous substances were found, that they existed in such small quantities so that they posed no threat to life, health or the environment and that therefore any and all action taken by the Plaintiff was improper.

The Medley Site is situated in a sparsely populated rural area.

9. That as to Paragraph 13, the Defendants deny that any significant levels of hazardous substances existed at the Site.

10. That as to Paragraph 14, the Defendants admit that certain actions were taken by Plaintiff but deny that they were necessary or proper under the facts and law known to Plaintiff at the time. That substantially all of the liquid which was removed from the Site was transported to a nearby creek and dumped into the creek. In addition, substantially all of the containers which were removed from the Site were taken to the Cherokee County landfill and dumped out there without any further treatment.

11. As to Paragraph 15, the Defendants admit that Plaintiff spent a large amount of money but allege that the amount is grossly excessive and was improperly spent. There is no need for any future expenditures.

12. That as to Paragraph 16, the Defendants deny any

liability to Plaintiff for any past or future expenses.

13. That as to Paragraph 17, the Defendants reiterate and incorporate by reference all of the allegations contained in the answers to Paragraphs 1 through 16.

14. That as to Paragraphs 18, 19, 20, 21, 22, 23 and 24, the Defendants admit the existence of the referenced statutes but deny that they apply to them.

15. That the Defendants deny the allegations contained in Paragraphs 25, 26 and 27.

16. That as to Paragraph 28, the Defendants admit that Plaintiff has incurred costs but deny that these were justified under the statutes.

17. That the Defendants deny the allegations contained in Paragraphs 29, 30 and 31.

CROSS-CLAIM AGAINST DEFENDANTS MILLIKEN, UNISPHERE

AND NATIONAL STARCH

1. The Medley Defendants reiterate and incorporate by reference all of the allegations contained in the First Defense, the same as if restated verbatim herein.

2. That the Defendants, Ralph Medley and Clyde Medley made verbal agreements with Milliken, Unisphere and National Starch to allow them and others to place containers of non-hazardous substances on the land of Ralph Medley. The billing for the storage was handled through Clyde Medley's business which is the sole proprietorship of Medley Concrete Works. Grace Medley

and Barry Medley have never had any proprietary interest in the business and were never a party to any agreements with any of the companies.

3. At no time were the Medley Defendants ever advised by any of the other Defendants that any hazardous substances were being stored on the Site. In addition, at no time did the Medley Defendants ever authorize or agree to allow hazardous substances to be placed at the Site.

4. That at all times, all of the other Defendants and companies involved assured the Medley Defendants that nothing harmful or hazardous would be placed at the Site.

5. That if any hazardous substances were placed at the Site it was placed there by one or more of the other Defendants and companies. It is impossible for the Medley Defendants to determine which, if any, of the other Defendants and companies may or may not have been responsible for any hazardous substances which may have been found.

6. That therefore, the Medley Defendants are informed and believe that if it is determined that one or more of the other Defendants placed hazardous substances on the Site, then that Defendant should indemnify the Medley Defendants from any and all liability and also for any costs, expenses and attorney's fee.

WHEREFORE, the Medley Defendants pray that the action be dismissed or in the alternative if judgment is granted that

they be indemnified by the other Defendants.

A handwritten signature in cursive script, reading "Wade S. Weatherford, III", written over a horizontal line.

WADE S. WEATHERFORD, III
Attorney at Law
P.O. Box 41
Gaffney, SC 29342

CERTIFICATE OF MAILING

Civil Action No. 7:86-252-3

The undersigned hereby certifies that he is the attorney for Ralph C. Medley, Clyde Medley, Grace Medley and Barry Medley, individually and d/b/a Medley's Concrete Works, in the within matter and that the within ANSWER and CROSS-CLAIM was served upon the attorneys for the Plaintiff and the other Defendants by depositing same in the United States mail, postage prepaid, addressed as follows:

F. Henry Habicht, II
Assistant Attorney General
Land and Natural Resources Division
U. S. Department of Justice
Washington, DC 20530

G. Stephen Manning
Attorney at Law
Environmental Enforcement Section
Land and Natural Resources Division
U. S. Department of Justice
10th Pennsylvania Ave., N.W.
Washington, DC 20530

Vinton DeVane Lide
United States Attorney
District of South Carolina
P.O. Box 2266
Columbia, SC 29202


James W. Hudgens
Attorney at Law
P.O. Box 5663
Spartanburg, SC 29304

John P. Mann
Attorney at Law
2222 Daniel Bldg.
Greenville, SC 29602

James D. McCoy, III
Assistant U. S. Attorney
P.O. Box 10067
Greenville, SC 29603

Robert Boyd
King & Spalding
Attorneys at Law
2500 Trust Company Tower
Atlanta, GA 30303

This 26th day of February, 1986


WADE S. WEATHERFORD, III
Attorney at Law
P.O. Box 41
Gaffney, SC 29342

Gaffney, SC

Memorandum

Manning 5



Subject

U.S.A. vs. RALPH C. MEDLEY, ET AL.

C/A No. 7:86-252-3

Date

February 27, 1986

To G. Stephen Manning, Esq.
Trial Attorney
Land & Natural Resources Division
Environmental Enforcement Section
U. S. Department of Justice
Washington, D. C. 20530

From Vinton D. Lide
USA/DSC
By: James D. McCoy III
AUSA/Greenville, S. C. 29603

Enclosed are copies of the answers of Unisphere Chemical Corporation and Milliken and Company, which we received in our office today.

JDMIII/nj

enclosures

P.S. Also enclosed are the responses to the court-ordered interrogatories under Rule 16(b) filed by Milliken. Neither Unisphere Chemical nor the Medley's have served us with their responses, but we expect to get them within the next few days, as the Clerk will advise the attorneys responsible of the necessity of filing same.

71-11-2-107

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LANDS DIVISION

ENVIRONMENT

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

United States of America,)
)
Plaintiff,)
)
vs.)
)
Ralph C. Medley; Clyde Medley,)
Grace Medley and Barry Medley,)
individually and d/b/a Medley's)
Concrete Works; Milliken and)
Company; Unisphere Chemical)
Corporation; National Starch)
and Chemical Corporation,)
)
Defendants.)

ANSWER OF
UNISPHERE CHEMICAL CORPORATION

C. A. No. 7:86-252-3

FIRST DEFENSE

Defendant Unisphere Chemical Corporation, answering the Complaint:~

1. Admits that it is a corporation incorporated in the State of South Carolina.

2. Admits Paragraphs 4, 5, 6 and 8 on information and belief.

3. Paragraph 9 is denied.

4. Paragraph 10 is admitted.

5. This Defendant is generally without knowledge or information as to the allegations of Paragraphs 11 and 12 (which are very broad and encompass a very large time span) and therefore deny same. However, insofar as the Complaint alleges that quantities of waste which came from this Defendant were disposed of at the Medley Farm Site (aka "Burnt Gin Site"), this Defendant is informed and believes as follows:

Heretofore, on or about June 1985, at the request of the EPA, this Defendant made a thorough search of its records in order to uncover any information or evidence regarding the possible shipment of waste by this Defendant to the Burnt Gin Site and certain other sites. This search indicated that on or about July 1, 1976, this Defendant arranged for disposal of 24 drums by Piedmont Industrial Services of Gaffney, South Carolina, an organization or entity which this Defendant is informed and believes was owned/operated by one or more of the Medleys. This Defendant is further informed and believes as

follows: (1) the 24 drums consisted of solid industrial waste; (2) the waste was not a "hazardous substance;" (3) the waste was sent to a site known as the "Love Springs Site" and not the Burnt Gin Site; (4) the Love Springs Site was approved by the South Carolina Department of Health and Environmental Control (SCDHEC).

Except as set forth above this Defendant is without knowledge as to any other disposals of industrial wastes by this Defendant that might be pertinent to this suit and therefore denies any allegations of such and demands strict proof thereof.

6. Answering Paragraphs 13, 14, 15, 28, 29 and 30 this Defendant is informed and believes that heretofore certain studies, tests and cleanup efforts have been undertaken and accomplished by EPA and SCDHEC at the Burnt Gin Site but the extent, details and costs of this, the necessity thereof and the need for further cleanup is not known to this Defendant and such allegations are therefore denied.

7. Paragraph 16 is denied.

8. Paragraphs 17 through 25 require no response by this Defendant.

9. This Defendant is without knowledge or information as to the truthfulness of the allegations of Paragraphs 26 and 27 and therefore denies same and demands strict proof thereof.

10. Paragraph 31 is denied and strict proof thereof is demanded.

11. Each and every allegation of the Complaint not hereinabove specifically admitted or denied is hereby denied and strict proof thereof is demanded.

SECOND DEFENSE

12. The allegations of Paragraphs 1 through 11 are adopted and reaffirmed as part of this defense.

13. Section 9607(b) of CERCLA [42 U.S.C.A. §9607(b)] provides in pertinent part as follows:

There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by--

....

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose

act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

....

14. While denying, as alleged herein, that this Defendant disposed of quantities of hazardous waste at the Burnt Gin Site, this Defendant nevertheless alleges that if in fact the allegations thereof be proven this Defendant alleges that at all times it exercised due care and took proper precautions within the language of §9607(b) which is hereby adopted as a separate defense.

WHEREFORE, Defendant Unisphere Chemical Corporation prays that the Complaint be dismissed as to this Defendant, with costs.

WARD, BARNES, LONG, HUDGENS,
ADAMS & WILKES
Attorneys for Defendant Unisphere
Chemical Corporation
191 N. Daniel Morgan Avenue
P. O. Box 5663
Spartanburg, South Carolina 29304
803-582-5683

By: _____
James W. Hudgens

February 26, 1986.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

United States of America,
Plaintiff,

vs.

Ralph C. Medley; Clyde Medley,
Grace Medley and Barry Medley,
individually and d/b/a Medley's
Concrete Works; Milliken and
Company; Unisphere Chemical
Corporation; National Starch
and Chemical Corporation,

Defendants.

CERTIFICATE OF
SERVICE BY MAIL

C. A. No. 7:86-252-3

The undersigned hereby certifies that he is one of the attorneys for Defendant Unisphere Chemical Corporation and that the Answer of Unisphere Chemical Corporation of February 26, 1986, was served upon the attorneys for the Plaintiff and certain of the co-Defendants on February 26, 1986, by depositing copies of same in the United States Mail with sufficient postage affixed thereto addressed as follows:

James D. McCoy, III, Esquire
Assistant U. S. Attorney
P. O. Box 10067
Greenville, South Carolina 29603

John P. Mann, Esquire
2222 Daniel Building
Greenville, South Carolina 29603

Wade S. Weatherford, III, Esquire
P. O. Box 41
Gaffney, South Carolina 29340

WARD, BARNES, LONG, HUDGENS,
ADAMS & WILKES
Attorneys for Defendant Unisphere
Chemical Corporation

By: _____

James W. Hudgens

February 26, 1986.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

RECEIVED

FEB 27 1986

**U.S. ATTORNEY
GREENVILLE, S.C.**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
RALPH C. MEDLEY; CLYDE MEDLEY,)
GRACE MEDLEY AND BARRY MEDLEY,)
INDIVIDUALLY AND d/b/a)
MEDLEY'S CONCRETE WORKS;)
MILLIKEN & COMPANY;)
UNISPHERE CHEMICAL CORPORATION;)
NATIONAL STARCH AND CHEMICAL)
CORPORATION,)
Defendants.)

Civil Action No. 7:86-252-3

RECEIVED

FEB 27 1986

**U.S. ATTORNEY
GREENVILLE, S.C.**

ANSWER

The defendant, Milliken & Company, answering the complaint of the plaintiff herein:

FOR A FIRST DEFENSE

1. Denies each and every allegation contained in said complaint not herein specifically admitted, controverted or denied.

2. Upon information and belief, admits the allegations of paragraph 1 stating that this action is being brought pursuant to Sections 104 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), and Section 2201 of Title 28 of the United States Code. Defendant denies the remaining allegations contained in this paragraph.

3. Defendant admits that the Court has jurisdiction pursuant to 28 U.S.C. §1345 and 42 U.S.C. §§9607(a) and 9613(b). Defendant denies that the Court has jurisdiction pursuant to 28 U.S.C. §2201.

4. Answering paragraph 3, defendant admits that venue is proper but denies the remaining allegations contained in this paragraph.

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 4 and 5 and, therefore, denies same.

6. Defendant admits paragraph 6.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 7 and 8 and, therefore, denies same.

8. Answering paragraph 9, as it applies to this defendant, this defendant admits that it has processed chemicals to produce products which were, from late 1974 to early 1976, disposed of at the Medley Farm site. More specifically, this defendant admits that a small portion of the total waste sent to the Medley Farm site by defendant contained substances subsequently defined as hazardous by Section 101(14) of CERCLA. Defendant, alleges upon information and belief, that the great majority of waste sent by this defendant to the Medley Farm site did not contain hazardous substances.

Defendant is without knowledge or information sufficient to form a belief as to whether there was a release or threatened release of hazardous substances which caused the incurrence of response costs, and therefore, denies same.

9. Defendant admits paragraph 10 as it applies to this defendant.

10. Answering paragraph 11, defendant admits that the Medley Farm site was a disposal facility for drums of waste. Defendant is without knowledge or information sufficient to form a belief as to whether the site handled hazardous waste and whether the site had six small lagoons, and therefore, denies same.

11. Answering paragraphs 12 through 15, defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained therein, and therefore, denies same.

12. Defendant denies the allegations of paragraph 16 as they apply to it. Defendant alleges, upon information and belief, that plaintiff has not incurred and will not incur in the future any costs within the scope of the National Contingency Plan.

13. As to paragraph 17, defendant's answer to plaintiff's allegations in paragraphs 1 through 16 of the complaint are fully answered above in paragraphs 1 through 11.

14. Defendant admits paragraphs 18 through 24.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 and therefore, denies same.

16. As to paragraph 26, this defendant admits that it arranged for the disposal of waste materials at the Medley Farm site and that a small quantity of these wastes contained substances which are now defined as hazardous by Section 101(14) of CERCLA. As to the remaining allegations contained in paragraph 26, this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies same.

17. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 27 through 29, and therefore, denies same.

18. Defendant denies paragraphs 30 and 31.

FOR A SECOND DEFENSE

The plaintiff's complaint fails to state a claim upon which relief may be obtained against this defendant under Section 107 of CERCLA and, therefore, the complaint should be dismissed.

FOR A THIRD DEFENSE

This defendant would show that such costs of removal or remedial action incurred by plaintiff are inconsistent with the National Contingency Plan, as referenced in Section 105 and 107(a)(4)(A) of CERCLA and, therefore, this defendant may not be held liable for such costs.

FOR A FOURTH DEFENSE

1. This defendant would show that if the enactment of CERCLA imposes liability upon this defendant as a generator of a portion of the wastes stored at the Medley Farm site, which is specifically denied, its liability, if any, should be apportioned to it in direct relation to the quantity, quality, and period of storage of its waste, as compared to the quantity, quality, and period of storage of all wastes at said facility.

2. This defendant would also show that such liability, if any, should be apportioned according to the relationship, if any, that such production or storage of all such waste bears to the acts and omissions of those parties selecting that storage facility for use, the operators of such facility, the owners thereof and any state or federal organization or agency which had any duty and obligation to regulate and control its operation.

3. Accordingly, this defendant would show that its responsibility, if any it has, to plaintiff should be so apportioned, and that liability under CERCLA is not joint and several.

FOR A FIFTH DEFENSE

This defendant would show that, in view of the absence of joint and several liability under CERCLA, certain necessary and indispensable parties under Rule 19 of the Federal Rules of Civil Procedure have not been joined as party defendants to this action and, therefore, pursuant to Rule 19(b), unless so joined, this action should be dismissed as to this defendant.

FOR A SIXTH DEFENSE

1. This defendant would show that the release, or threat of release, if any, of hazardous substances at the Medley Farm site, and the damages resulting therefrom, if any, were caused solely by acts or omissions of third parties other than an employee or agent of the defendant, or by one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant.

2. Further, this defendant would show that it exercised due care with respect to the hazardous substance(s) concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and that it took precautions against foreseeable acts or omissions of any such third party and the consequences that would foreseeably result from such acts or omissions.

3. Accordingly, defendant pleads Section 107(b)(3) of CERCLA as a complete bar to this action.

FOR A SEVENTH DEFENSE

This defendant would show that no "imminent and substantial endangerment" to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the Medley Farm site has occurred or will occur and, therefore, this defendant pleads lack of imminent and substantial endangerment as a complete bar to plaintiff's claims for relief under Sections 104(a) and 107 of CERCLA.

FOR AN EIGHTH DEFENSE

1. This defendant would show that prior to the enactment of CERCLA on December 11, 1980, the relief sought in plaintiff's claims could not have been obtained, as there existed no constitutional, statutory or common law precedent for the maintenance of an action of this nature seeking the relief, or

any portion thereof, set forth in plaintiff's complaint against a generator of waste materials such as this defendant.

2. This defendant, therefore, had no reason or opportunity at the time it shipped materials to protect itself from then unknown exposure to risk from improper storage and maintenance of the Medley Farm site, or to set aside and reserve funds for such possible exposure, or to establish proper prices for its products to generate sufficient funds to establish a risk exposure account to provide the means to pay its share, if any, of any subsequent claim for improper storage and maintenance for such waste material, if any.

Constitutional Arguments
3. Any attempt to obtain relief from this defendant in this action, therefore, is arbitrary and punitive in nature, a violation of due process, and constitutes an impairment of contract, and therefore is in violation of Section 10 of Article 1 of the United States Constitution and/or constitutes an attempt to take property of this defendant without due process of law, in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

FOR A NINTH DEFENSE

Defendant would show that plaintiff's claim for declaratory judgment for future response costs presents no case or controversy as required by Article III, Section 2 of the Constitution of the United States and Section 2201 of Title 28 of the United States Code. Therefore, this Court is without subject matter jurisdiction over this claim and this claim should be dismissed.

FOR A TENTH DEFENSE

Defendant would show that plaintiff has failed to satisfy each and every condition precedent to recover for past and/or future response costs under Section 107 of CERCLA, and therefore, the complaint should be dismissed.

FOR AN ELEVENTH DEFENSE

Defendant would show that plaintiff has failed to join the State of South Carolina to this action as a necessary and indispensable party as required by

Rule 19 of the Federal Rules of Civil Procedure and therefore, plaintiff's claim for declaratory judgment for future response costs must be dismissed.

FOR A TWELTH DEFENSE

Defendant would show that plaintiff has not and may never incur additional response costs under CERCLA at the Medley Farm site. Therefore, plaintiff's claim for declaratory judgment is not ripe for judicial review, and therefore, should be dismissed.

FOR A THIRTEENTH DEFENSE AND COUNTERCLAIM

Upon information and belief, defendant would show that the United States, through the Environmental Protection Agency and its employees and agents, caused hazardous substances to be placed on the surface and in the subsurface of the Medley Farm site through its emergency response action at this site in June and July of 1983. If defendant should be declared to be jointly and severally liable for future response costs pursuant to 28 U.S.C. §2201, then the United States should also be declared jointly and severally liable as well and liable to defendant for contribution.

CROSS-CLAIM AGAINST DEFENDANTS UNISPHERE CHEMICAL CORPORATION AND NATIONAL STARCH AND CHEMICAL CORPORATION

Milliken & Company, through its undersigned attorneys, alleges:

1. Plaintiff United States of America has filed against defendant Milliken & Company (Milliken) and others, a complaint, a copy of which is hereto attached as Exhibit A.

2. Defendant Milliken incorporates by reference paragraphs 7, 8, and 31 of plaintiff's complaint.

3. Defendants Unisphere Chemical Corporation, and National Starch and Chemical Corporation are generators of hazardous substances as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980. Unisphere and National Starch by contract, agree-

ment or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Medley Farm site referenced in Exhibit A on one or more occasions between the mid 1960's until approximately 1977.

4. If Milliken is adjudged to be jointly and severally liable to the United States for past or future response costs at the Medley Farm site, then Unisphere Chemical Corporation and National Starch and Chemical Corporation are also jointly and severally liable and each above-named defendant is liable to Milliken for contribution pursuant to CERCLA.

WHEREFORE, having fully answered, this defendant prays that the plaintiff's complaint be dismissed as to it, with costs, and with such other relief as this court may deem just and proper.

Dated this 26 day of February, 1986.

THOMPSON, MANN AND HUTSON

By: 

Robert T. Thompson
John P. Mann
James W. Potter
Suite 2200
The Daniel Building
Greenville, South Carolina 29602
(803) 242-3200

HOLCOMBE, BOMAR, WYNN AND GUNN

By: 

William U. Gunn
Post Office Drawer 1897
Spartanburg, South Carolina 29304
(803) 585-4273

Attorneys for Milliken & Company

CERTIFICATE OF SERVICE

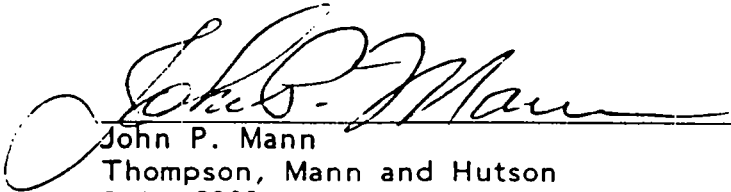
I hereby certify that on this 26th day of February, 1986, the foregoing Answer, Counterclaim, Cross-claim, Third-party Complaint and Answers to Standard Interrogatories were mailed, postage prepaid, to the following:

Wade S. Weatherford, III
Post Office Box 41
Gaffney, South Carolina 29340
Attorney for Ralph C. Medley, Clyde Medley, Grace Medley,
Barry Medley, and Medley Concrete Works

Charles H. Tisdale, Jr.
King & Spalding
2500 Trust Company Tower
Atlanta, Georgia 30303
Attorneys for National Starch and Chemical Corporation

James W. Hudgens
Ward, Barnes, Long, Hudgens, Adams & Wilkes
191 North Daniel Morgan Avenue
Spartanburg, South Carolina 29301
Attorneys for Unisphere Chemical Company

James D. McCoy III
Assistant United States Attorney
Post Office Box 10067
Greenville, South Carolina 29603
Attorney for United States of America


John P. Mann
Thompson, Mann and Hutson
Suite 2200
The Daniel Building
Greenville, South Carolina 29602

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH C. MEDLEY; CLYDE MEDLEY,
GRACE MEDLEY AND BARRY MEDLEY,
INDIVIDUALLY AND d/b/a MEDLEY'S
CONCRETE WORKS; MILLIKEN &
COMPANY; UNISPHERE CHEMICAL
CORPORATION; NATIONAL STARCH
AND CHEMICAL CORPORATION,

Defendants,

MILLIKEN & COMPANY,

Third-Party Plaintiff,

vs.

ABCO INDUSTRIES, INC.; BASF
CORPORATION; ETHOX CHEMICALS,
INC.; POLYMER INDUSTRIES, a
division of MORTON-THIOKOL, INC.;
AND TANNER CHEMICAL COMPANY,

Third-Party Defendants.

Civil Action No. 7:86-252-3

THIRD-PARTY COMPLAINT

Defendant Milliken & Company (Milliken), through its undersigned attorneys, alleges as a third party plaintiff that:

1. Plaintiff United States of America (hereafter the Government) has filed against Milliken and other defendants a complaint, a copy of which is attached as Exhibit A.

2. Milliken & Company is a Delaware corporation, qualified to do business and doing business in the State of South Carolina.

3. Third-party defendant ABCO Industries, Inc. is a corporation incorporated in South Carolina and who is presently doing business in the State of South Carolina.

4. Third-party defendant BASF Corporation is a corporation who is presently doing business in the State of South Carolina.

5. Third-party defendant Ethox Chemicals, Inc. is a corporation who is presently doing business in the State of South Carolina.

6. Third-party defendant Polymer Industries, a division of Morton-Thiokol, Inc., is a corporation who is presently doing business in the State of South Carolina.

7. Third-party defendant Tanner Chemical Company is a corporation who is presently doing business in the State of South Carolina.

8. This court has jurisdiction over the subject matter of this third party complaint pursuant to 28 U.S.C. § 1331 (1976), 42 U.S.C. §§ 9607(a) and 9613(b) (Supp. 1982) and Federal Rule of Civil Procedure 14.

5. The Government brings suit against Milliken and others for recovery of response costs incurred and to be incurred by the Government as a result of the alleged release or threatened release of hazardous substances, within the meaning of Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601(14) (Supp. 1982) at a site in Cherokee County, South Carolina known as the Medley Farm Site. The Medley Farm Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601 (9)(Supp. 1982). The Government also seeks declaratory relief pursuant to 28 U.S.C. §2201 (1976) for future response costs which may be incurred.

6. The Government alleges that Milliken is a generator of hazardous substances who is jointly and severally liable to the Government for reimbursement of its response costs incurred and to be incurred, pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a) (Supp. 1982).

7. Upon information and belief, the third-party defendants are generators of hazardous substances as defined by Section 101(14) of CERCLA, who by contract, agreement or otherwise, arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances at the Medley Farm Site on one or more occasions between the mid-1960's and 1977. Each third-party defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(a) (Supp. 1982).

8. The Government alleges that at some or all times relevant hereto, there were releases or threatened releases into the environment of some or all of the hazardous substances at the Medley Farm Site. The Government contends that these releases were within the meaning of Section 101(14) and (22) of CERCLA, 42 U.S.C. § 9601(14) and (22) (Supp. 1982).

9. If a release or threatened release of hazardous substances occurred at the Medley Farm Site, which Milliken denies, and if the Government properly incurred response costs pursuant to CERCLA, which Milliken also denies, then all third-party defendants are jointly and severally liable for reimbursement of response costs incurred and to be incurred pursuant to Section 107(a) of CERCLA.

10. If Milliken is adjudged to be jointly and severally liable to the Government for its past and/or future response costs at the Medley Farm Site, then all third-party defendants are also jointly and severally liable, and as such are liable to Milliken for contribution pursuant to CERCLA for all or part of the Government's claim against Milliken. If the Court should find that the

Government's claim for declaratory judgment against Milliken is proper, then all third-party defendants are also liable to Milliken for contribution on that claim.

WHEREFORE, Milliken demands judgment against all third-party defendants for contribution for any sums that may be adjudged or any relief that may be declared against defendant Milliken in favor of plaintiff United States of America.

THOMPSON, MANN AND HUTSON

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Attorneys for Milliken & Company

Dated: Feb. 26, 1986

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH C. MEDLEY; CLYDE MEDLEY,
GRACE MEDLEY AND BARRY MEDLEY,
INDIVIDUALLY AND d/b/a MEDLEY'S
CONCRETE WORKS; MILLIKEN &
COMPANY; UNISPHERE CHEMICAL
CORPORATION; NATIONAL STARCH
AND CHEMICAL CORPORATION,

Defendants,

Civil Action No. 7:86-252-3

MILLIKEN & COMPANY,

Third-Party Plaintiff,

vs.

ABCO INDUSTRIES, INC.; BASF
CORPORATION; ETHOX CHEMICALS,
INC.; POLYMER INDUSTRIES, a
division of MORTON-THIOKOL, INC.;
AND TANNER CHEMICAL COMPANY,

Third-Party Defendants.

ANSWER OF THIRD-PARTY PLAINTIFF
MILLIKEN & COMPANY TO STANDARD
INTERROGATORIES ADOPTED BY THE COURT

Defendant, Milliken & Company (Milliken) pursuant to Federal Local Court Rule 16(b), responds to the standard interrogatories for a plaintiff as they relate to Milliken's third-party complaint against ABCO Industries, Inc., BASF

Corporation, Ethox Chemicals, Inc., Morton-Thiokol, Inc., and Tanner Chemical Company (Third-party defendants) as follows:

1. State with particularity what you contend the defendant did, or failed to do, which entitles you to obtain the relief you seek in this action.

ANSWER

Milliken alleges the following on information and belief:

Third-party defendants are generators of hazardous substances, who by contract, agreement or otherwise arranged for the disposal, or arranged with a transporter for transport for disposal, of hazardous substances at the Medley Farm site.

The United States alleges that all named defendants as generators of hazardous substances or owner-operators of the Medley Farm site are jointly and severally liable under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) 42 U.S.C. §9607 (Supp. 1982) for past or future response costs incurred to clean up hazardous substances at the Medley Farm site. If Milliken is held jointly and severally liable, then third party defendants, as generators, are also jointly and severally liable as well and are liable to Milliken for contribution under CERCLA.

2. Describe in detail all laws, acts having the force and effect of law, codes, regulations and legal principles, standards, and customs or usages, which you contend are applicable to this action.

ANSWER

The Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq. (Supp. 1982) and all rules and regulations promulgated under the authority of CERCLA. CERCLA has been interpreted to allow for contribution in cases of joint and several liability. See Wehner v. Syntex Agribusiness Corp., ___ F. Supp. ___, 22 ERC 1732 (E.D. Mo

1985) and cases cited therein; U.S. v. South Carolina Recycling and Disposal, Inc., ___ F. Supp. ___, 20 ERC 1753, 1759, n.8 (D.S.C. 1984).

The Government contends that it is entitled to a declaratory judgment for future response costs pursuant to 28 U.S.C. §2201. If so entitled, Milliken contends it is entitled to a declaratory judgment against these third-party defendants for contribution.

3. State the full names, addresses, and telephone numbers of all lay witnesses whose testimony you may use at the trial of this case and describe the issues to which that testimony will relate.

ANSWER

A. Mr. Ralph C. Medley

On information and belief, Mr. Medley resides in Cherokee County, South Carolina near Gaffney and is a party to this action. His exact address and telephone number are unknown.

Mr. Medley is the alleged owner of the waste site and may testify as to the users of the site.

B. Mr. Clyde Medley

On information and belief, Mr. Medley resides in Cherokee County, South Carolina near Gaffney and is a party to this action. His exact address and telephone number are unknown.

Mr. Medley allegedly ran Medley Concrete Works, which operated this waste site. Mr. Medley may testify as to users of the site.

C. Mrs. Grace Medley

On information and belief, Mrs. Medley resides in Cherokee County, South Carolina near Gaffney and is a party to this action. Her exact address and telephone number are unknown.

Mrs. Medley may testify as to users of the site.

D. Mr. Barry Medley

On information and belief, Mr. Medley resides in Cherokee County, South Carolina near Gaffney and is a party to this action. His exact address and telephone number are unknown.

Mr. Medley may testify as to users of the site.

E. Mr. Jim Hall
Mr. Steve Miller

Mr. Hall and Mr. Miller work at
Milliken Chemical
Post Office Box 817
Inman, South Carolina 29349
Phone: (803) 472-9041

Mr. Hall and Mr. Miller will testify as to their observation of ABCO Industries, Inc.'s use of the Medley farm site.

F. Currently unknown other person(s) involved in the operation of the Medley waste disposal site who may testify as to users of the site.

G. Currently unknown present or ex-employees of the third-party defendants to testify on the companies' activities with this waste site.

Milliken reserves the right, pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and the Local Rules of this court, to supplement its response to this interrogatory and identify additional lay witnesses that it may use at trial within ten (10) days after receipt of that information.

4. Identify by full name, address, and telephone number each person whom you expect to call as an expert witness at the trial of this case, and, as to each expert so identified, state and subject matter on which he is expected to testify, the substance of the facts and opinions to which he is expected to testify, and a summary of the grounds for each opinion.

ANSWER

Milliken is unable to identify, at this time, the person(s) that it may call as expert witnesses at the trial of this case. Milliken reserves the right to

supplement its response to this interrogatory within ten (10) days after receipt of additional information.

5. If you contend that you have been injured or damaged, describe said injuries and damages in detail and list the elements of damages for which you contend you are entitled to recover and the measure by which you contend the same should be computed.

ANSWER

Milliken does not contend that it has been injured or damaged by the third-party defendants; Milliken only seeks a right to contribution from these third-party defendants for any amounts, past or future, for which Milliken is held or declared to be liable to the plaintiff United States under CERCLA. The amount and method of contribution shall be determined by the Court according to CERCLA and federal common law. Milliken is unable, at this time, to specify the percentage or amount that these third-party defendants are liable for, but it would not exceed the amount by which Milliken might be found liable to the United States.

6. State the full name, address, and telephone number of all persons or legal entities who have a subrogation interest in the cause of action set forth in your complaint, and state the basis and extent of said interest.

ANSWER

None.

7. Outline in detail the discovery you anticipate you will pursue in this case and state the time you estimate it will take you to complete each item of same, along with an explanation of how you compute said times.

ANSWER

Milliken anticipates that it will serve interrogatories, requests for production of documents and requests for admission on the third-party defendants within 120 days of filing this third-party complaint. Milliken may also

take depositions of the Medley defendants and the third-party defendants within 120 days of the filing of the third-party complaint. Additional depositions may be noticed and additional interrogatories, requests for production of documents and requests for admissions served after receiving the responses to Milliken's initial round of discovery. All of Milliken's discovery should be completed within 180 days after the filing of the third-party complaint.

8. Do you wish for this case to be tried jury or nonjury?

ANSWER

Non-jury

Respectfully submitted,

THOMPSON, MANN AND HUTSON

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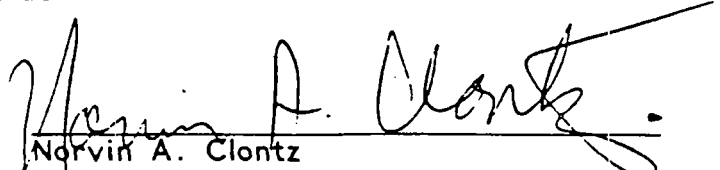
Dated: Feb 26, 1986

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG


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VERIFICATION

PERSONALLY appeared before me Norvin A. Clontz who, on oath states:
That he is Business Manager
of Milliken & Company, the third party plaintiff in the foregoing action; that
he has read the foregoing answers and responses and that he is familiar with
all the facts and circumstances stated therein; and the same are true of his
own knowledge except those stated therein to be upon information and belief
and as to those he believes it to be true.


Norvin A. Clontz

SWORN to be before me this
25 day of February, 1986


Notary Public for South Carolina

My Commission Expires: _____

LUCILE H. WESSINGER
COMMISSION NO. 15944
My commission expires November 5, 1990

REGIONAL
COUNSEL
RECEIVED
MAR 10 1986
EPA-REGION IV
ATLANTA, GA.